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United States Government Accountability Office
Washington, DC 20548

B-319151

December 23, 2009

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable John Kline
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: State Fiscal Stabilization Fund Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Education (Education), entitled “State Fiscal Stabilization Fund Program” (RIN: 1810-AB04). We received the rule on December 10, 2009. It was published in the *Federal Register* as “final requirements, definitions, and approval criteria” on November 12, 2009, with an effective date of January 11, 2010. 74 Fed. Reg. 58,436.

The final rule establishes requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund (Stabilization or SFSF) program. The purpose of the Stabilization program, a grant created under the American Recovery and Reinvestment Act of 2009 (ARRA), is to provide approximately \$48.6 billion in formula grants to states to help stabilize state and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a state’s commitment to advance essential education reform in key areas.

Education may use one or more of these requirements, definitions, and approval criteria, which are based on grantees’ education assurances regarding reform, in awarding funds under this program in fiscal year (FY) 2010. Education is taking this action to specify the data and information that grantees must collect and publicly report with respect to those assurances and to help ensure grantees’ ability to collect and publicly report the required data and information.

The final rule has an effective date of January 11, 2010. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on November 12, 2009, but we did not receive the rule until December 10, 2009. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of Education's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that, other than the delay of the effective date, Education complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth A. M. McFadden
Assistant General Counsel for
Regulatory Services
Department of Education

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
"STATE FISCAL STABILIZATION FUND PROGRAM"
(RIN: 1810-AB04)

(i) Cost-benefit analysis

Education assessed the potential costs and benefits and determined that the benefits justify the costs. Education estimates that the total burden of responding to these requirements will be 294,076 hours and between \$13,042,280 and \$27,842,280 for state education agencies (SEAs), 522,677 hours and \$13,066,925 for local education agencies (LEAs), and 199,285 hours and \$4,982,131 for institutions of higher education (IHEs), for a total burden of 1,016,038 hours at a cost of between \$31,091,336 and \$45,891,336. Education notes that its estimates include the effort involved with collecting and reporting the data, and have added the estimate that states would need to spend an average of \$10,000 to develop and maintain a Web site on which to post this information.

Education states the principal benefits of the requirements are those resulting from the reporting and public availability of information on each state's progress in the four reform areas described in the ARRA. Education believes that the information gathered and reported as a result of these requirements will improve public accountability for performance, help states, LEAs, and schools learn from one another and make improvements in what they are doing, and inform the Elementary and Secondary Education Act of 1965 (ESEA) reauthorization process. According to Education, a second major benefit is that better public information on state and local progress in the four reform areas will likely spur more rapid progress on those reforms, because states and LEAs that appear to be lagging in one or more areas may see a need to redouble their efforts. Education believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes. Additionally, Education also believes that states' implementation of these requirements will lead to more widespread development and implementation of better teacher and principal evaluation systems. Education notes that in particular, the availability of accurate, complete, and valid achievement data is essential to implementing better systems of teacher and principal evaluation. Education believes that the requirements will have additional benefits to the extent that they provide states with incentives to address inequities in the distribution of effective teachers, improve the quality of state assessments, and undergo intensive efforts to improve struggling schools.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Education certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities, including small LEAs receiving funds under this program and small IHEs.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to the Comptroller General, Education did not include an analysis of the final regulations under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. Education published a notice of proposed requirements, definitions, and approval criteria for this program in the *Federal Register* on July 29, 2009. 74 Fed. Reg. 37,837. Education received timely comments from 60 parties, which are addressed in the final rule. 74 Fed. Reg. 58,439.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This notice contains information collection requirements that are subject to review by the Office of Management and Budget (OMB). Education has received emergency approval for the information collections under the requirements described in the notice under Information Collection Reference Number 200910-1810-003.

Statutory authorization for the rule

Education states the final rule is authorized by Title XIV of the ARRA, Pub. L. No. 111-5.

Executive Order No. 12,866 (Regulatory Planning and Review)

Education has determined that this regulatory action will have an annual effect on the economy of more than \$100 million because the amount of government transfers provided through SFSF will exceed that amount. Therefore, this action is “economically significant” and subject to OMB review. Education also notes that the cost and benefits of the regulatory action were assessed under the terms of the order.